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**Robert W. Jackmore**  
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**ExxonMobil**

February 22, 2010

**By UPS Overnight Delivery**

Craig Whitenack, Civil Investigator  
U.S. Environmental Protection Agency  
Region IX, Southern California Field Office  
600 Wilshire Avenue, Suite 1420  
Los Angeles, California 90017

**Re: Yosemite Creek Superfund Site, San Francisco, California**  
**U.S. EPA Request for Information 104(e) of CERCLA**  
**42 U.S.C. § 9604(e)**

Dear Mr. Whitenack:

Please accept this letter and its attachments as the response of Exxon Mobil Corporation (hereafter "ExxonMobil") to the Section 104(e) information request (the "Request") that EPA sent in connection with the Yosemite Creek Superfund Site (or the "Site"). That Request was received by ExxonMobil in October 2009. Thank you for extending your deadline for response to February 26, 2010.

**CERCLA**

Section 104(e)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") grants "[a]ny officer, employee, or representative of the President, duly designated by the President..." the right to seek information under Section 104(e)(2) through(4) of CERCLA. EPA has been designated by the President. Section 1040(e)(2) allows EPA to seek the following information:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

42 U.S.C. § 9604(c)(2). EPA may also enter "[a]ny vessel, facility or establishment, or other place or property..." and take samples. 42 U.S.C. § 9604(e)(3). Similarly, EPA may inspect such locations and take samples. However, Section 104(e)(1) indicates that EPA's authority under 104(e) "may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter." 42 U.S.C. § 9604(e)(1).

Thus, while EPA may require the submission of relevant information for the appropriate purposes, its authority is not unlimited. Even EPA's enforcement rights are limited. EPA may ask the Attorney General to commence a civil action to compel compliance with a 104(e) request, but, by statute, the court can only direct compliance with a 104(e) request if "there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance." 42 U.S.C. § 9604(e)(5)(B). Even then, it cannot do so if "under the circumstances of the

case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 9604(e).

### GENERAL OBJECTIONS

ExxonMobil, as set forth in the following pages and the attachment hereto, is providing to EPA the information readily available to ExxonMobil. Moreover, ExxonMobil is willing to provide any additional specific information requested by EPA in compliance with CERCLA to the extent that it is relevant and reasonably available. However, both ExxonMobil’s response and any future information it may provide are subject to the following objections (hereafter the “General Objections”):

1. The 104(e) Request is arbitrary and capricious, an abuse of discretion, or not otherwise in accordance with law. As set forth above, CERCLA Section 104(e)(1) allows EPA to seek information to enforce CERCLA and to determine the need for, to choose, or to take a response action.
2. The 104(e) Request uses undefined terms, is excessively broad, vague, ambiguous, irrelevant, unduly burdensome, and not reasonably calculated to lead to information that can be legally obtained under Section 104(e), and therefore exceed EPA’s statutory authority under CERCLA and contravenes ExxonMobil’s constitutional rights. In responding to these requests, ExxonMobil relies on the definition of these terms as they are commonly used (*i.e.*, their dictionary definitions).
3. ExxonMobil asserts all applicable privileges and protections it has with regard to EPA’s enumerated inquiries including the attorney-client privilege, the attorney work product doctrine, materials generated in anticipation of litigation, and privileges for materials which are proprietary, company confidential, or trade secret.
4. The Request is overly broad and unduly burdensome in that it seeks information or documents regarding facilities that have no potential nexus to the Site (Yosemite Creek). As such, each of these requests exceeds EPA’s statutory authority under CERCLA and contravenes ExxonMobil’s rights.
5. The Request is overly broad and unduly burdensome in that it seeks information or documents regarding facilities after known operations or relevant time period. As such, each of these requests exceeds EPA’s statutory authority under CERCLA and contravenes ExxonMobil’s rights.
6. ExxonMobil objects to the requirement to provide the source of the information, which is beyond the scope of USEPA’s authority as set forth in 42 U.S.C. § 9604(e), and because such information is burdensome to collect and often not known.
7. ExxonMobil objects to any requirement to produce documents or information already in the possession of a government agency, already in the public domain, or previously provided to EPA. Such requirement is duplicative and, therefore, unnecessary and burdensome.
8. ExxonMobil disavows any obligation to supplement these responses on an ongoing basis. Notwithstanding the foregoing, if more information is desired, ExxonMobil is willing to provide additional information if specifically requested by EPA in the future and in compliance with CERCLA provided that the information is relevant, reasonably available, has not already been provided, and is not otherwise subject to these objections.
9. EPA’s definitions of “Respondent” and “you” in its information Request are overly broad and it is not possible for ExxonMobil to answer questions on behalf of all persons thereby defined.

10. The Request is inappropriate to the extent it calls for ExxonMobil to provide legal conclusion concerning its potential liability under CERCLA for the Site. For the avoidance of doubt and notwithstanding the existing Consent Decree, ExxonMobil does not by answering this Request or in any other way admit responsibility or liability for the Site.
11. ExxonMobil objects to the Request to the extent it seeks trade secrets or other confidential business information.

Notwithstanding and without waiving these objections, and subject to them, ExxonMobil has prepared this response based upon the information available to it. Where questions or definitions are vague, ambiguous, overbroad, unduly burdensome, or beyond the scope of EPA's authority pursuant to Section 104(e) of CERCLA, ExxonMobil is making appropriate and reasonable efforts to provide responsive information based on ExxonMobil's interpretation of the Request. To the extent that information submitted herein is not required by law or is otherwise outside the scope of EPA's 104(e) authority, that information is voluntarily submitted. ExxonMobil waives no rights or protection of information it voluntarily submits.

## **RESPONSES**

Subject to the foregoing, ExxonMobil provides the following responses:

**Request No. 1: Describe generally the nature of the business conducted by Respondent and identify the products manufactured, formulated, or prepared by respondent throughout its history of operations.**

**Response No. 1.**

ExxonMobil's primary business activity is the exploration, production, refining and marketing of CERCLA-exempt petroleum and related products.

**Request No. 2: Provide the name (or other identifier) and address of any facilities where Respondent carried out operations between 1940 and 1988 (the "Relevant Time Period") and that:**

- a. Ever shipped drums or other containers to the BAD site for recycling, cleaning, reuse, disposal, or sale.
- b. and/were located in California (excluding locations where ONLY clerical/office work was performed);
- c. are/were located outside of California and shipped any drums or other containers to California for recycling, cleaning, reuse, disposal, or sale (for drums and containers that were shipped to California for sale, include in your response only transactions where the drums and containers themselves were an object of the sale, not transactions where the sole object of the sale was useful product contained in a drum or other container).

**Response No. 2.**

- a. During the Relevant Time Period of 1940 and 1988, ExxonMobil carried out operations between 1969 and 1988 at its refinery located at 3400 East Second Street in Benicia, California 94510. The ExxonMobil is only aware of its Benicia refinery in California using the BAD site for a limited period from 1978 to 1980. Available records (enclosed as Attachment 2) show transactions with the BAD site. The drums involved in these transactions are believed to have contained petroleum-exempt lubricating oils.
- b. The Bay Area Drum facility (BAD) located at 1212 Thomas Avenue in San Francisco has been identified by EPA as a potential facility that may have contributed to contamination at the Yosemite Creek Superfund Site (Site). ExxonMobil has identified one facility in California with a relationship to the BAD facility during the relevant time period (see response to 2.a). ExxonMobil is responding to Request No. 2b and other requests in this submittal on behalf of its former Benicia facility for the time

period that Exxon owned that facility and including information that relates to the BAD facility in San Francisco, CA because of a potential relationship or nexus to the Site during the relevant time period. ExxonMobil sold its Benicia refinery nearly a decade ago and transferred most records to the purchaser. Most refinery employees went to work for the purchaser after the sale. We have reviewed the records we still have for that facility for relevant information, and we interviewed our employees who worked at Benicia at any time during the period from the opening of the refinery in 1969 to the end of EPA's search period in 1988. Neither the records nor the employees had information relevant to our response to this 104e questionnaire.

- c. ExxonMobil has not discovered any information suggesting that any company facilities outside of California purchased or shipped drums to the BAD site in San Francisco, CA (see response to 2.b.) or otherwise had a relationship to Yosemite Creek.

**Request No. 3: Provide a brief description of the nature of the respondent's operations at each Facility identified in your response to Question 2 (the "Facilities") including:**

- a. the date such operations commenced and concluded; and
- b. the types of work performed at each location over time, including but not limited to the industrial, chemical, or institutional processes undertaken at each location.

**Response 3.**

During the Relevant Time Period of 1940 to 1988, the Exxon Benicia refinery operated as a petroleum products refinery commencing in 1969 and continuing through 1988. Subject to and without waiving the General Objections or any other objections, ExxonMobil specifically objects to Request No. 3 on the grounds that it is burdensome, not relevant to any current issues at the Site, and is beyond the scope of EPA's statutory authority under Section 104(e). Notwithstanding the foregoing, Exxon utilized many processes in the refining of crude oil. The refining of crude oil included heating the crude oil which can introduce a variety of products to the process, including catalysts and specialty chemicals. Possible waste components of a crude oil refinery include off-spec oils and petroleum products, spilled petroleum substances mixed with soil, spent catalysts, spent cleaning fluids, API separator sludge (oil emulsified in water, with sand and although we did not discover any records of such substances, potentially cleaning fluids).

**Request No. 4. For each Facility, describe the types of records regarding the storage, production, purchasing and use of Substances of Interest ("SOI") during the Relevant Time period that still exist and periods of time covered by each type of record.**

**Response No. 4.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil did not locate records responsive to this request.

**Request No. 5. Did respondent ever (not just during the Relevant Time Period) produce, purchase, use or store one of the COCs (including any substances or wastes containing the COCs) at any of the Facilities? State the factual basis for your response.**

**Response No. 5.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil is providing a copy of the Benicia Refinery Waste Management Plan for 1984. We searched but did not locate plans for other years. The Plan is enclosed to this response as Attachment 5.

**Request No. 6. If the answer to Question 5 is yes, identify each COC produced, purchased, used, or stored at each Facility.**

**Response No. 6.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil has not located records responsive to this request other than the plan attached in response to question 5.

**Request No. 7. If the answer to Question 5 is yes, identify the time period during which each COC was produced, purchased, used, or stored at each Facility.**

**Response No. 7.**

See response to No. 6.

**Request No. 8. If the answer to Question 5 is yes, identify the average annual quantity of each COC produced, purchased, used, or stored at each Facility.**

**Response No. 8.**

See response to No. 6.

**Request No. 9. If the answer to Question 5 is yes, identify the volume of each COC disposed by the Facility annually and describe the method and location of disposal.**

**Response No. 9.**

See response to No. 5.

**Request No. 10. Did respondent ever (not just during the Relevant Time period) produce, purchase, use, or store hydraulic oil or transformer oil at any of the Facilities?**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil has not located records responsive to this request.

**Request No. 11. If the answer to Question 10 is yes, identify each specific type of hydraulic oil and transformer oil produced, purchased, used, or stored at each Facility.**

**Response No. 11.**

See response to No. 10.

**Request No. 12. If the answer to Question 10 is yes, identify the time period during which each type of hydraulic oil and transformer oil was produced, purchased, used, or stored at each Facility.**

**Response No. 12.**

See response to No. 10.

**Request No. 13. If the answer to Question 10 is yes, identify the average annual quantity of each type of hydraulic oil and transformer oil produced, purchased, used, or stored at each Facility.**

**Response No. 13.**

See response to No. 10.

**Request No. 14. If the answer to Question 10 is yes, identify the volume of each hydraulic oil and transformer oil disposed by the Facility annually and describe the method and location of disposal.**

**Response No. 14.**

See response to No. 10.

**Request No. 15. Provide the following information for each SOI (SOIs include any substance or waste containing the SOI) identified in your responses to Questions 5 and 10:**

- a. Describe briefly the purpose for which each SOI was used at the Facility. If there was more than one use, describe each use and the time period for each use;
- b. Identify the supplier(s) of the SOIs and the time period during which they supplied the SOIs, and provide copies of all contracts, service orders, shipping manifests, invoices, receipts, canceled checks and other documents pertaining to the procurement of the SOI;
- c. State whether the SOIs were delivered to the Facility in bulk or in closed containers and describe any changes in the method of delivery over time;
- d. Describe how, where, when, and by whom the containers used to store the SOIs (or in which SOIs were purchased) were cleaned, removed from the Facility, and/or disposed of, and describe any changes in cleaning, removal, or disposal practices over time.

**Response No. 15.**

See responses to Requests No. 5 and 10.

**Request No. 16: For each SOI delivered to the Facilities in closed containers, describe the containers, including but not limited to:**

- a. the type of container (e.g., 55 gal drum, tote, etc);
- b. whether the containers were new or used; and
- c. if the containers were used, a description of the prior use of the container.

**Response No. 16.**

See response to Request No. 10.

**Request No. 17. For each container that Respondent used to store a SOI or in which SOIs were purchased ("Substance-Holding Containers" or "SHCs") that was later removed from the Facility, provide a complete description of where the SHCs were sent and the circumstances under which the SHCs were removed from the Facility. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.**

**Response No. 17.**

See response to Request No. 10.

**Request No. 18. For each SHC that was removed from the Facility, describe Respondent's contracts, agreements, or other arrangements under which SHCs were removed from the Facility, and identify all parties to each contract, agreement, or other arrangement described. Distinguish between the Relevant Time Period and the time period since 1988.**

**Response No. 18.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, available records for the relevant time period are provided in Attachment 2.

**Request No. 19.** For each SHC, provide a complete explanation regarding the ownership of the SHC prior to delivery, while onsite, and after it was removed from the Facility. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.

**Response No. 19.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil has not been able to locate records responsive to this request.

**Request No. 20.** Identify all individuals who currently have, and those who have had responsibility for procurement of Materials at the Facilities. Also provide each individual's job title, duties, dates performing those duties, current position or the date of the individual's resignation, and the nature of the information possessed by each individual concerning Respondent's procurement of Materials.

**Response No. 20.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. ExxonMobil no longer operates the Benicia refinery and the records and witness interviews did not identify ExxonMobil employees at Benicia with material procurement responsibility during the relevant time period.

**Request No. 21.** Describe how each type of waste containing any SOIs was collected and stored at the Facilities prior to disposal/recycling/sale/transport, including:

- a. the type of container in which each type of waste was placed/stored;
- b. how frequently each type of waste was removed from the Facility;

Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.

**Response No. 21.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil provides a copy of the Benicia Refinery Waste Management Plan during the relevant time period as Attachment 5. ExxonMobil no longer operates the refinery and has not located additional records responsive to this request.

**Request No. 22.** Describe the containers used to remove each type of waste containing any SOIs from the Facilities, including but not limited to:

- a. the type of container (e.g. 55 gal. drum, dumpster, etc.);
- b. the colors of the containers;
- c. any distinctive stripes or other markings on those containers;
- d. any labels or writing on those containers (including the content of those labels);
- e. whether those containers were new or used; and
- f. if those containers were used, a description of the prior use of the container.

Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.

**Response No. 22.**

See response to Request No. 21.

**Request No. 23.** For each type of waste generated at the Facilities that contained any of the SOIs, describe Respondent's contracts, agreements, or other arrangements for its disposal, treatment, or recycling and identify all parties to each contract, agreement, or other arrangement described. State the ownership of waste containers as specified under each contract, agreement, or other arrangement described and the ultimate destination or use for such containers. Distinguish between the Relevant Time Period and the time period since 1988, and describe any changes in Respondent's practices over time.

**Response No. 23.**

ExxonMobil no longer operates the refinery and has not located records responsive to this request beyond records provided as Attachments 2 and 5 of this response.

**Request No. 24.** Identify all individuals who currently have, and those who have had, responsibility for Respondent's environmental matters (including responsibility for the disposal, treatment, storage, recycling, or sale or respondent's wastes and SHCs). Provide the job title, duties, dates performing those duties, supervisors for those duties, current position or the date of the individual's resignation, and the nature of the information possessed by such individuals concerning Respondent's waste management.

**Response No. 24.**

ExxonMobil no longer operates the refinery so cannot provide information on individuals who currently have responsibility for environmental matters at the Benicia refinery.

Robert W. Jackmore, Superfund Area Manager, ExxonMobil Environmental Services, 3225 Gallows Road, Fairfax, VA 22037 is knowledgeable on ExxonMobil's environmental matters as it relates to the BAD site.

**Request No. 25.** Did Respondent ever purchase drums or other containers from a drum recycler or drum reconditioner? If yes, identify the entities or individuals from which respondent acquired such drums or containers.

**Response No. 25.**

ExxonMobil objects to this request as overly broad and information not related to the BAD site. Notwithstanding the above, ExxonMobil has provided additional records on other drum recyclers in the response to Request No. 28.

**Request No. 26.** Prior to 1988, did respondent always keep its waste streams that contained SOIs from its other waste streams?

**Response No. 26.**

See response to Request No. 21.

**Request No. 27.** Identify all removal and remedial actions conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or comparable state law; all corrective actions conducted pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq; and all cleanups conducted pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. where (a) one of the COCs was addressed by the cleanup and (b) at which Respondent paid a portion of cleanup costs or performed work. Provide copies of all correspondence between Respondent and any federal or state government agency that (a) identifies a COC and (b) is related to one of the above-mentioned sites.

**Response No. 27.**

The Request is overly broad and unduly burdensome in that it seeks information or documents regarding facilities that have no nexus to the BAD site and therefore no potential nexus to the Site (Yosemite Creek). As



such, each of these requests exceed EPA's statutory authority under CERCLA and contravenes ExxonMobil's rights. ExxonMobil is responding to this request only as it relates to the BAD site.

ExxonMobil (along with 50 other parties) participated in a Consent Order (dated March 14, 1996) with the California Department of Toxic Substances related to the BAD site. The Consent Order included performing certain environmental removal activities at the BAD site under DTSC supervision. ExxonMobil entered into a de minimis settlement with the DTSC for the BAD site on December 3, 1997 which settled its obligation for the BAD site and fulfilled ExxonMobil's obligations under the 1996 Consent Order. Correspondence with the State of California related to the BAD site is enclosed as Attachment 27.

**Request No. 28. Provide all records of communication between Respondent and Bay Area Drum Company, Inc.; Meyers Drum Company; AW Sorich Bucket and Drum Company; Waymire Drum Company, Inc.; Waymire Drum and Barrel Company, Inc.; Bedini Barrels Inc.; Bedini Steel drum Corp.; Bedini Drum; or any other person or entity that owned or operated the facility located at 1212 Thomas Avenue, in the City and County of San Francisco, California.**

**Response No. 28.**

Records for the relevant time period as they may relate to the BAD site, to entities identified in Request No. 28 and located in the San Francisco Bay Area are provided as Attachment 2 and Attachment 28 to this response.

**Request No. 29. Identify the time periods regarding which Respondent does not have any records regarding the SOIs that were produced, purchased, used, or stored at the Facilities.**

Available records for the relevant time period have been provided. See responses to Request Nos. 5, 10 and 21.

**Request No. 30. Provide copies of all documents containing information responsive to the previous twenty-nine questions and identify the questions to which each document is responsive.**

**Response No. 30.**

Documents responsive to the previous twenty-nine questions are cited or referenced in the response to each specific question and are included as attachments to this Information Request Response.

Very truly yours,

  
Robert Jackmore  
ExxonMobil Environmental Services  
Area Manager